



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 4, 2003

Mr. Brad Norton
Assistant City Attorney
City of Austin - Law Department
P. O. Box 1546
Austin, Texas 78767-1546

OR2003-2276

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178891.

The City of Austin (the "city") received a request for copies of three offense reports. You claim that the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes. Section 58.007 of the Family Code provides that juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential. *See* Fam. Code § 58.007. Section 58.007 states in pertinent part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Offense report numbers 022941082 and 022541208 constitute juvenile law enforcement records pertaining to delinquent conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply to this information. Accordingly, we conclude that the city must withhold offense report numbers 022941082 and 022541208 in their entirety pursuant to section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

You claim that offense report number 023181660 is excepted from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy.¹ The common-law right to privacy protects information from disclosure if (1) it contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) it is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. Based on our review of your representations and this offense report, we conclude that the city must withhold the information that we have marked in this offense report pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

In summary, the city must withhold offense report numbers 022941082 and 022541208 in their entirety pursuant to section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The city must withhold the information that we have marked in offense report number 023181660 pursuant to section 552.101 in conjunction with the common-law right to privacy. The city must release the remaining information in offense report number 023181660 to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

¹ Section 552.101 also encompasses information that is protected from disclosure under the common-law right to privacy.

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 178891

Enc. Marked documents

c: Mr. Mike Gonzales
Austin Landmark Property Services, Inc.
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(w/o enclosures)